

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

JACK JOSEPH BATTLE, JR.,

Case No. 3:16-cv-00242-MMD-WGC

Plaintiff,

ORDER

v.

WARDEN BYRNE, et al.,

Defendants.

This action is a *pro se* petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254 by a Nevada state prisoner. Petitioner has paid the filing fee for this action. (ECF no. 2). The Court has reviewed the habeas petition, and it shall be served on respondents. Respondents shall file a response to the petition, as set forth at the conclusion of this order.

Petitioner has filed an application to proceed *in forma pauperis*. (ECF no. 3). Given that petitioner has paid the filing fee for this action, his motion to proceed *in forma pauperis* is denied as moot.

Petitioner has filed a motion for the appointment of counsel. (ECF no. 4). Pursuant to 18 U.S.C. § 3006A(2)(B), the district court has discretion to appoint counsel when it determines that the “interests of justice” require representation in a habeas corpus case. Petitioner has no constitutional right to appointed counsel in a federal habeas corpus proceeding. *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987); *Bonin v. Vasquez*, 999 F.2d 425, 428 (9th Cir. 1993). The decision to appoint counsel is within the Court’s discretion. *Chaney v. Lewis*, 801 F.2d 1191, 1196 (9th Cir. 1986), *cert. denied*, 481 U.S. 1023 (1987); *Bashor v. Risley*, 730 F.2d 1228, 1234 (9th Cir.), *cert.*

1 *denied*, 469 U.S. 838(1984). The petition on file in this action is sufficiently clear in
2 presenting the issues that petitioner wishes to bring. The issues in this case are not
3 complex. The appointment of counsel is not justified in this instance. Petitioner's motion
4 is denied.

5 It is therefore ordered that the Clerk will electronically serve the petition (ECF no.
6 1) upon the respondents. The Clerk of Court will add Attorney General Adam Paul
7 Laxalt to the CM/ECF docket sheet as counsel for respondents.

8 It is further ordered that respondents shall have forty-five (45) days from the entry
9 of this order within which to answer, or otherwise respond to, the petition. In their
10 answer or other response, respondents shall address all claims presented in the
11 petition. Respondents will raise all potential affirmative defenses in the initial responsive
12 pleading, including lack of exhaustion and procedural default. Successive motions to
13 dismiss will not be entertained. If an answer is filed, respondents shall comply with the
14 requirements of Rule 5 of the Rules Governing Proceedings in the United States District
15 Courts under 28 U.S.C. §2254. If an answer is filed, petitioner shall have forty-five (45)
16 days from the date of service of the answer to file a reply.

17 It is further ordered that any state court record exhibits filed by respondents shall
18 be filed with a separate index of exhibits identifying the exhibits by number or letter. The
19 hard copy of all state court record exhibits must be forwarded, for this case, to the staff
20 attorneys in the Reno Division of the Clerk of Court.

21 It is further ordered that petitioner's motion to proceed *in forma pauperis* (ECF
22 no. 3) is denied as moot.

23 It is further ordered that petitioner's motion for the appointment of counsel (ECF
24 no. 4) is denied.

25 DATED THIS 23rd day of August 2016.



MIRANDA M. DU
UNITED STATES DISTRICT JUDGE